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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TENISHA TATE-AUSTIN; PAUL AUSTIN; and FAIR HOUSING ADVOCATES OF NORTHERN CALIFORNIA,

Plaintiffs,

v.

JANETTE C. MILLER; MILLER AND PEROTTI REAL ESTATE APPRAISALS, INC.; and AMC LINKS LLC;

Defendants.

Case No. 3:21-cv-09319 MMC

PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS FILED BY DEFENDANT JANETTE C. MILLER AND MILLER AND PEROTTI REAL ESTATE APPRAISALS

HEARING:
Date: March 4, 2022
Time: 9:00 a.m.
Place: 450 Golden Gate Ave., San Francisco Courtroom 7

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Federal Cases

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Other

Plaintiffs claim that a professional real estate appraiser considered race in appraising a Black couple's house in violation of federal and state civil rights statutes. Defendants Janette C. Miller and Miller and Perotti Real Estate Appraisals, Inc. ("Miller") move to dismiss every claim alleged in the complaint pursuant Fed. R. Civ. P. 12(b)(6) (Doc. 19, hereafter "Motion"). Miller's Motion should be denied in its entirety, because it misreads – and then misapplies – the applicable law. It also asks this Court to consider untested, inadmissible extrinsic evidence, not properly before the Court, and to credit Miller's evidentiary assertions, weighing the evidence at the pleading stage. Ultimately, Miller's motion should be denied because the complaint pleads sufficient factual allegations to state plausible claims for each of the seven causes of action, and gives Miller fair notice of plaintiffs' claims.

I. STATEMENT OF FACTS ALLEGED IN THE COMPLAINT

Plaintiffs Tenisha Tate-Austin and Paul Austin, a Black couple, own a house located at 20 Pacheco Street, in Marin County ("Pacheco Street House"). The house has an address in Sausalito, but it is located in an unincorporated area of Marin County known as Marin City. (Complaint for Injunctive, Declaratory and Monetary Relief, Doc. 1 ["Complaint"], ¶ 7.) When the Austins purchased the house for $550,000 in December 2016, it was appraised at a value of $575,500. (*Id.* ¶ 40.) The Austins renovated and expanded it significantly. (*Id.* ¶¶ 41, 43-44.) A subsequent appraisal in May 2018 concluded that the house was worth $864,000; an appraisal in March 2019 concluded that the value had risen to $1,450,000. (*Id.* ¶¶ 42, 45.)

In early 2020, the Austins wanted to refinance their mortgage. They contacted their mortgage broker, who retained an appraisal management company called AMC Links, LLC,[1] to obtain an

[1] AMC Links, LLC is named as a defendant, but it is not a party to the pending motion to dismiss. AMC Links LLC filed an answer to the complaint on January 7, 2022. (Doc. 15.)

appraisal of the house. (*Id.* ¶ 46.) In turn, AMC Links contracted with Defendant Janette C. Miller of Miller and Perotti Real Estate Appraisers, Inc. to conduct an appraisal. (*Id.* ¶ 47.)

Miller visited the house to conduct the appraisal on or about January 29, 2020. (*Id.*) Paul Austin met with Miller when she arrived for the inspection. (*Id.* ¶ 49.) Photos showing the Austins and their children – an African American family – were conspicuously displayed during Miller's inspection. Likewise, the Austins' collection of African-themed art was also visible. (*Id.* ¶¶ 50-51.)

Miller submitted an appraisal report for the Pacheco Street House dated February 12, 2020, concluding that the market value of the house was $995,000. (*Id.* ¶ 53.) This value was unexpectedly and unreasonably low compared to previous appraisals and current market conditions. The appraisal report contains at least five indicia that race was a consideration in appraising the value of the Austin's house:

> "(1) unreasonably and inexplicably low market value ascribed to the Pacheco Street House; (2) unsupportable adjustments to value made based solely on the Pacheco Street House's location in Marin City; (3) the selection of properties as "comparable" based on racial demographics; (4) comments regarding the "distinct marketability" of Marin City; and (5) the "race or perceived race of the homeowners."

(Complaint ¶ 52.) Each of these indicia is detailed in the complaint and summarized here.

A. Indications of racial considerations outlined the complaint

(1) Miller's value of $995,000 was 49% lower than the appraisal conducted three weeks later, after the Austins whitewashed their house.

Given the previous valuations, the Austins were shocked at Miller's valuation of the Pacheco Street House at $995,000, or $582 per square foot. (Complaint ¶¶ 68, 74.) Miller's low valuation meant that the Austins were unable to qualify for the refinance deal that they had applied for. (Complaint ¶ 68.) They requested a second appraisal. (*Id.*)

Before the second appraisal inspection took place, however, the Austins made the Pacheco Street House look as if it was owned by a white family. (*Id.* ¶ 69-71.) They removed their family

photos and African-themed art. (*Id.* ¶ 70.) They had a white friend replace their photos with photos of her own (white) family. (*Id.*) The white friend sat in their house, posing as a homeowner, and met the second appraiser when she inspected the house. The Austins were not present for that inspection. (*Id.* ¶ 71.)

After whitewashing their house, the results of the new appraisal were strikingly different. On March 8, 2020, a different appraiser issued a report estimating the value of the Pacheco Street House at $1,482,500 ("March 2020 Appraisal"). This is 49% higher than Miller's appraised value just three weeks earlier. (*Id.* ¶ 73.) The March 2020 appraisal estimated that the house was worth $877 per square foot (*Id.* ¶ 72), which is 50.6% higher than the price quoted by Miller. (*Id.* ¶ 74.)

(2) Miller's selection of "comparable" sales reflects racial considerations.

One measure used by most real estate appraisers, including Miller, is the price of similar houses that have recently sold, called "comps." (Complaint ¶ 25.) Miller selected five property sales and one sale listing as comps. (*Id.* ¶ 59.) Three of these comps were located in Marin City. Selecting comps primarily in Marin City, as Miller did, reflects racial considerations. (*Id.* ¶¶ 59-61.) The value of houses located in areas with historically non-white or heterogeneous racial demographics is artificially low because of historic discrimination, disinvestment, redlining, and explicit race-based appraisal standards. (*Id.* ¶¶ 22-25.) Marin City is an area with a long history of race-based discrimination and undervaluation. (*Id.* ¶ 31.) Choosing comps in Marin City recycles and perpetuates the historically low values derived through discrimination. (*Id.*)

Finding comps in Marin City also requires a narrow focus, because Marin City has a very small number of property sales every year compared to the rest of Sausalito and adjacent Mill Valley. In 2019, only three single-family-homes sold in Marin City. Likewise, only three sold in the previous year, 2018. (Complaint ¶ 55.) By contrast, the overwhelmingly white areas of Sausalito and Mill Valley have hundreds of single-family home sales every year, including in 2018 and 2019. (Complaint

¶ 60.) Plaintiffs contend that focusing on Marin City and failing to consider comps in Sausalito and Mill Valley reflect race-based considerations.

Miller was so laser-focused on finding comps in an area with similar demographics that she chose properties that were not similar to the Pacheco House in any way except for their location. (*Id.* ¶ 59.) One property was bank-owned and sold in foreclosure two years before Miller's appraisal. (*Id.*) Thus, the conditions under which it was sold – i.e, foreclosure – almost certainly led to a lower sale price. Likewise, choosing an old property transaction rather than a recent one may also skew valuation. Another comp Miller chose in Marin City was an attached dwelling – a townhouse/condominium – within a planned use development. (*Id.* ¶ 59) A townhouse in a planned development is not comparable to the Pacheco Street House, which is a stand-alone, single-family-home. By focusing on dissimilar properties in Marin City, which is a historically Black neighborhood that continues to be perceived as a Black neighborhood, Miller expressed racial bias.

(3) Miller's "adjustments" to the value of the Pacheco Street House are based on the racial demographics of Marin City.

After choosing three dissimilar comps in Marin City, Miller added two comps in Sausalito and one in Mill Valley. (*Id.* ¶ 61.) But Miller apparently considered these two cities, which are overwhelmingly white, to be so fundamentally different than Marin City that she "adjusted" the value of the Sausalito and Mill Valley properties downward by 28% in order to compare them to the Pacheco Street House. (*Id.*) Her adjustments were purportedly based on data regarding the average price per square foot of houses sold in each area. (*Id.*) But there are not enough sales in any given year, or even in several years combined, to conclude that properties in Marin City sell for any particular average per square foot. (*Id.*) Likewise, the price per square foot is based on many factors besides location, including quality of construction and amenities. (*Id.*) After erroneously arriving at a 25% difference, Miller inexplicably decided to adjust the value of the Pacheco Street House by more

than 25%. (*Id.* ¶ 62) These downward adjustments strongly suggest that Miller had the racial demographics of these communities in mind. (*Id.*)

(4) Miller's comments reflect race-based considerations

Miller opines in her appraisal that Marin City has a "distinct marketability which differs from the surrounding areas." (Complaint ¶ 55.) This is coded language based on race due to the differences in racial demographics of Marin City compared to Sausalito and Mill Valley. Embedded in this statement are Miller's assumptions that Marin City is predominantly non-white; that white homebuyers would not be willing to consider purchasing a house located in Marin City; and, thus, Marin City is not comparable in marketability to surrounding areas. Each assumption is based on race. (*Id.* ¶ 55) Moreover, the statement is not based on any actual data, and nor could it be. Marin City has such a small number of home sales from year to year that there is not a statistically significant and legitimate basis on which to conclude that it has a "distinct marketability." As Miller's appraisal itself notes, there were only three sales of single-family homes in Marin City in the previous year and three the year before. (*Id.*)

(5) Other evidence of discrimination in the complaint

The complaint also lays out other evidence that Miller considered race. For example, Miller claims to have arrived at a "predominate value" of $720,000 for single-family-houses in Marin City based on five years of property sales. Again, there are not enough property sales in Marin City to draw any conclusions of a value that is distinct from surrounding areas. (*Id.*) But fundamentally for this case, her decision to even attempt to analyze Marin City's "predominate value" reflects a narrow focus that can only be explained by perceptions of local racial demographics. (*Id.*)

Racial demographics also explain Miller's lopsided analysis of market trends. Although purporting to track recent market trends in Marin City, Miller writes about market trends in the broader Bay Area between 2003 and 2008 – a period that ended with "tightening credit and

deteriorating economic conditions" more than 10 years before the report was prepared. (Complaint ¶¶ 56-57.) The use of such outdated "trends" inevitably resulted in a lower value estimate for the Pacheco Street House. (*Id.* ¶ 57.) By contrast, Miller reviews more recent trends showing increasing home values in the predominantly white City of Sausalito since 2014. (*Id.* ¶ 58.) Miller is silent as to why those same, more recent trends of increasing home values do not apply to the more heterogeneous community of Marin City.

B. The certifications signed by Miller

The standardized appraisal form used by Miller contains dozens of certifications that the appraiser must sign. (Complaint ¶¶ 63-64.) In these certifications, Miller agrees to provide an appraisal conducted in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP), which states that an appraiser "must not use or rely on unsupported conclusions relating to characteristics such as race, color, … or that homogeneity of such characteristics is necessary to maximize value." (*Id.* ¶ 36.) Likewise, Miller signed that she would "select[] and use[] comparable sales that are locationally, physically, and functionally most similar to the subject property," in Certification number 7. (*Id.* ¶ 63.) She also agreed that "the **borrower**, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants **may rely** on this appraisal report as part of any mortgage finance transaction that involves any one or more of the parties." (Complaint ¶ 63, emphasis added.) Consistent with these acknowledgements, the borrower – the Austins – relied on Miller's appraisal in connection with the Austins' refinance application. (Complaint ¶¶ 77, 105.) As a result, the Austins lost out on the favorable terms that had initially been available. (*Id.* ¶ 77.)

II. LEGAL STANDARD UNDER FED. R. CIV. P. 12(b)(6)

The complaint "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Accordingly, it should not be dismissed for failure to state a claim. *Avenue 6E Invest., LLC v. City of Yuma*, 818 F.3d 493, 497 (9th Cir. 2016).

III. ARGUMENT

Miller first claims that California case law limits the duties of real estate appraisers, and as a result, all of plaintiffs' claims fail as a matter of law. (Motion at 4-6.) Second, Miller argues that the evidence of race discrimination outlined in detail in plaintiffs' complaint is insufficient as a matter of law. (Motion at 6-9.) Third, Miller asserts that the FHA, FEHA, the Unruh Act, and the Unfair Competition Law do not apply here even if these defendants took race into account when they appraised the Pacheco Street House. (Motion at 5-6.) Finally, Miller returns to California cases to argue that she owed no duty to plaintiffs, and therefore cannot be held liable for negligent misrepresentation. (Motion at 18.) Each of these arguments is fundamentally flawed. Plaintiffs will debunk each in turn.

The substantive law that applies to each claim is addressed below.

A. The Complaint states a claim under the Fair Housing Act.

Plaintiff's first claim is the federal Fair Housing Act (FHA). Whether an FHA complaint states a claim for relief is to be judged by the statutory elements of the FHA.[2] *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 250 (9th Cir. 1997). The FHA provides a private right of action for an "aggrieved person" who claims to have been injured by "an alleged discriminatory housing practice." 42 U.S.C. § 3613(a)(1)(A). The FHA's broad definition of "aggrieved person" includes individuals,

[2] California cases regarding an appraiser's duties do not provide the substantive law that informs whether plaintiffs have stated viable claims under the FHA, the Civil Rights Act of 1866, the California Fair Employment and Housing Act ("FEHA"), the Unruh Act, or the Unfair Competition Law ("UCL"). *See Mejia v. EMC Mortgage Corp.,* CV 09-4701 CAS (CFEx), 2010 WL 11515305 at *4 n.3 (C.D. Cal. 2010) (holding that California law governing the duties of a lender is not dispositive of plaintiffs' claims under the FHA). *Gilligan,* 108 F.3d. at 250; *Schlegel v. Wells Fargo Bank, NA,* 720 F.3d 1204, 1208 (9th Cir. 2013) (FDCPA case). Those cases do not even inform the basis for plaintiffs' claim for negligent misrepresentation, as explained below, Section III.F).

corporations, and entities including fair housing organizations. 42 U.S.C. § 3602(d); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). The term "discriminatory housing practice" is defined in 42 U.S.C. § 3602 (f) to include acts made unlawful under the substantive sections of the FHA, including the sections claimed by plaintiffs here: §§ 3604 (a), 3605(a), 3617, and 3604(c). (Complaint, First Claim for Relief, ¶¶ 85-86.) The conduct set forth in the complaint states a claim for each of those discriminatory housing practices.

1. The Austins are "aggrieved persons" within the meaning of the FHA.

The Austins are aggrieved persons because they claim that they suffered injury as a result of the discriminatory appraisal practices employed by Miller. That injury includes economic damages, suffered when "they were not able to refinance on the favorable terms that had been available one month before." (Complaint ¶ 77.) Likewise, the Austins adequately allege that they suffered from other damages, including "emotional distress with attendant physical injuries, and violation of their civil rights." (*Id.* § 80.) The Austins also allege that they were injured by the reduction in property values – including their own and in Marin City generally – caused by defendants' discriminatory housing practices. (*Id.*) Each of these forms of injury is cognizable under the FHA.

Miller offers extrinsic evidence of mortgage rates in an attempt to refute plaintiffs' claims that they suffered injury when Miller engaged in discriminatory housing practices. (Motion at 2.) That evidence is both irrelevant and improper. Plaintiffs' injury is based on both economic damages and non-economic damages such as emotional distress. Moreover, plaintiffs do not allege that they were injured solely because of the interest rate that they were offered as a result of Miller's low appraisal. Mortgage loan terms consist of more than just interest rates. The interest rate of plaintiffs' loan and how that rate affects plaintiffs' damages is a subject for discovery; it is not a basis on which to dismiss plaintiffs' claims.

More fundamentally, it would be improper to give any weight to the interest rates because

they do not appear in plaintiffs' complaint. Factual allegations made in a party's brief that do not appear in the complaint should not be considered in determining whether the well-pled facts of the complaint state a claim. *Schneider v. Cal. Dep. of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998).

2. FHANC is an aggrieved person under the FHA.

FHANC avers that it is "dedicated to promoting equal housing opportunity in Marin, Solano, and Sonoma Counties through community education, government advocacy, and counseling." (Complaint ¶ 9.) The complaint contains detailed allegations to establish that defendants' discriminatory practices caused the agency's damages in the form of diversion of resources and frustration of mission, both of which are legitimate categories of damages in a fair housing case. *See*, *e.g., Fair Housing of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002). The complaint alleges both injuries. The complaint alleges that FHANC diverted its resources from other investigations and activities to investigate and respond to Miller's discriminatory appraisal practices and developed and executed plans to counteract the effects of discriminatory appraisal practices through education and media campaigns. (Complaint ¶ 78.) For frustration of mission, the complaint alleges that Miller's discriminatory appraisal practices undermined FHANC's mission by conducting racialized home valuations that perpetuate segregation, depress home values in Marin City, and deprive residents of color of housing opportunities, which will necessitate that FHANC divert additional resources in the future to educate the community about their fair housing rights. (*Id.* ¶ 79.) These allegations are more than sufficient to show that FHANC is an aggrieved person within the meaning of the FHA.

3. The conduct alleged is a discriminatory housing practice barred by § 3604(a).

The plaintiffs allege that Miller committed discriminatory housing practices in violation of the FHA, 42 U.S.C. § 3604 (a). (Complaint ¶ 86 (a).) Any practice that "otherwise makes unavailable" a dwelling because of race violates § 3604(a). To state a claim under the FHA, it is sufficient to show that a prohibited basis such as race was a consideration and played some role in a real estate

transaction. *Moore v. Townsend,* 525 F.2d 482, 485 (7th Cir. 1975). For example, in *Hanson v. Veterans Admin.*, 800 F.2d 1381, 1386 (5th Cir. 1986), a discriminatory appraisal case alleging a violation of § 3604(a), the Fifth Circuit reversed the trial court's dismissal and held that a "discriminatory appraisal may effectively prevent blacks from purchasing or selling a home for its fair market value. This interferes with the exercise of rights granted by the Fair Housing Act."

The scope of 3604(a) and the FHA generally to encompass discriminatory appraisal practices was also affirmed in *United States v. American Institute of Real Estate Appraisers*, 442 F. Supp. 1072 (N.D. Ill. 1977). In that case, the United States sued four professional associations, including the American Institute of Real Estate Appraisers (AIREA), for violating the FHA by promulgating rules and standards that caused appraisers and lenders to consider race in appraisals and loan transactions. *Id.* at 1076. Over the objection of certain AIREA members, the court approved the settlement and held unequivocally that "the Fair Housing Act does apply to appraisers of real estate." *Id.* at 1079. The court reasoned that the rules and standards that made race and national origin a consideration in appraisals and home loans constituted a violation of § 3604 (a), because the practice "may effectively 'make unavailable or deny' a 'dwelling.'" *Id*. at 1079.

HUD regulations interpreting § 3604(a)'s "otherwise make unavailable" language also construe 3604(a) to broadly bar appraisals that "discourag[e] any person from . . . purchasing . . . a dwelling because of race . . . or because of the race . . . of persons in a community [or] neighborhood," 24 C.F.R. § 100.70(c)(1), or that "discourag[e] the purchase . . . of a dwelling because of race . . . by exaggerating drawbacks . . . of a community [or] neighborhood," 24 C.F.R. § 100.70(c)(1). These regulations are entitled to deference. *Meyer v. Holley*, 537 U.S. 280, 287 (2003)(according *Chevron* deference to HUD's FHA regulations). Miller's low appraisal value, use of grossly dissimilar comps, and comments about the "distinct marketability" of houses in Marin City broadly discourage the purchase of property in Marin City because of actual or perceived racial demographics. Likewise, her

comments and illogical adjustments to value may discourage buyers by exaggerating drawbacks of Marin City. Similarly, while no plaintiff here was a purchaser of a dwelling, each is injured by violation of § 3604(a) because, among other reasons, these practices "tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community [or] neighborhood." 24 C.F.R. § 100.70(a).

After § 3605 was amended in 1988 to explicitly outlaw discriminatory appraisal practices, several courts have dismissed § 3604(a) claims in appraisal cases, reasoning that there is no need for 3604(a) to cover what 3605 explicitly bans. *See, e.g, Eva v. Midwest National Mortgage Banc, Inc.*, 143 F. Supp. 2d 862, 885 (N.D. Ohio 2001). This Court should reject such a cramped reading of § 3604 (a) in adjudicating a motion to dismiss.

First, nothing in the 1988 amendments narrowed the scope of § 3604(a). Congress did not intend to alter the application of § 3604(a) when it amended § 3605. On the contrary, when amending a statute, Congress is assumed to know prior court decisions construing those statutes. "Congress' decision in 1988 to amend the FHA while still adhering to the operative language in [§ 3604(a) and § 3605] is convincing support for the conclusion that Congress accepted and ratified" prior construction of the unamended text of those FHA provisions. *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 536 (2015).

Second, the injurious effect of the discriminatory appraisal practices is reflected in § 3604(a)'s "otherwise make unavailable" provision and HUD regulations construing that text. The harm that flows from discriminatory appraisal practices, as alleged in the complaint, is the perpetuation of the legacy of past discriminatory practices that "tend to perpetuate, segregated housing patterns," 24 C.F.R. § 100.70(a), by "discouraging the purchase . . . of a dwelling because of race," 24 C.F.R. § 100.70(c)(1), (2). These theories of injury are uniquely supported by § 3604(a), and plaintiffs should be allowed to develop them in this action. *Inclusive Communities,* 576 U.S. at 520 (describing the

scope of "otherwise make unavailable," as a "catchall phrase" that also "signals a shift in emphasis from an actor's intent to the consequences of his actions.")

4. Plaintiffs have adequately pled evidence that may give rise to an inference of intent.

Miller argues that this case should be dismissed because plaintiffs "failed to allege any facts to show that Miller was motivated to discriminate against the Austins based on their race or that Miller had discriminatory intent."[3] (Motion at 6.) But even Miller acknowledges that plaintiffs allege not one, but five indicia of race-based discrimination in her appraisal. (*Id.*) Each of these indicia, individually and taken as a whole, may lead to an inference that Miller considered race in her appraisal, in violation of each of the laws alleged.

In *Pacific Shores Properties LLC v. City of Newport Beach*, the Ninth Circuit noted that a plaintiff has many different methods of proof available in establishing an inference of discriminatory intent in an FHA case. 730 F.3d 1142, 1158 (9th Cir. 2013). One such method is to "simply produce direct or circumstantial evidence demonstrating that a discriminatory reason more likely than not motivated" the defendant's actions and adversely affected the plaintiff. *Id.; see also Desert Palace, Inc. v. Costa,* 539 U.S. 90, 99–100 (2003) ("'Circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence.'") At the summary judgment stage, and particularly at the motion to dismiss stage, this is a low bar. Any indication of a discriminatory motive is sufficient to send the case to a fact-finder. *Id.* at 1159, citing *Schnidrig v. Columbia Mach., Inc.,* 80 F.3d 1406, 1409 (9th Cir.1996); *see also City of Los Angeles v. Citigroup Inc.*, 24 F. Supp. 3d 940, 953 (C.D. Cal. 2014) (allegations that Black borrowers received inferior

[3] It is unclear if Miller seeks to dismiss plaintiffs' claims because they believe that plaintiffs must prove that Miller harbored animus toward African Americans. Any such belief is mistaken. A plaintiff alleging a violation of the FHA needs to prove only that the defendant treated her differently because of a protected characteristic. Proof of animus or malice is not required. *See, e.g., Community Services, Inc. v. Wind Gap Mun. Authority*, 421 F.3d 170, 177 (3d Cir. 2005); *Village of Bellwood v. Dwivedi*, 895 F.2d 1521, 1530–31 (7th Cir. 1990); 2 Cal. Code Regs. § 12041 (b).

loan terms as part of a pattern of discriminatory lending practices were sufficient to overcome a motion to dismiss); *Gilley v. JPMorgan Chase Bank, N.A.*, 12CV1774 AJB JMA, 2012 WL 10424926, at *4 (S.D. Cal. Oct. 12, 2012)(denying or delaying loan processing because plaintiff was on maternity leave sufficient to withstand motion to dismiss).

Miller argues that plaintiffs lose here because they cannot satisfy the elements of a prima facie case under *McDonnell Douglas*, citing *Steptoe v. Savings of America,* 800 F. Supp. 142 (N.D. Ohio 1992). (Motion at 12.) *Steptoe* stands for precisely the opposite proposition. In that case, the court counseled *against* "mechanically applying the *McDonnell Douglas"* criteria in a case alleging a discriminatory appraisal under the FHA. *Id.* at 1546. The ultimate question on summary judgment in *Steptoe,* the court held, was whether there was evidence from which a jury could infer either discriminatory intent or disparate impact. On a motion to dismiss, the hurdle is even lower.

The cases cited by Miller (at 6) are inapposite and distinguishable. In *Garcia v. Country Wide Financial Corp*., the court held that plaintiff's intentional discrimination claim failed because plaintiff provided "no factual allegations regarding intent to discriminate beyond his bare assertion that Defendants intentionally discriminated." 2008 WL 7842104, No. EDCV 07-1161 VAP JCRx (C.D. Cal. 2008). Similarly, the minimal amount of evidence of discrimination adduced at trial doomed the plaintiffs' claims in *AFSCME v. State of Washington*, 770 F.2d 1401, 1406-07 (9th Cir. 1985). That conclusion cannot be reached here, as plaintiffs allege facts that support at least five indicia that race played a role in Miller's appraisal. For example, Miller's deviation from USPAP standards in making adjustments to value and hyper-focusing on comps with demographic similarities rather than other similarities may give rise to an inference of discrimination. *See, e.g., Earl v. Nielsen Media Research Inc.*, 658 F.3d 1108, 1117 (9th Cir. 2011) (deviating from normal practices and standards raises a triable issue of pretext); *Flores v. Pierce*, 617 F.2d 1386, 1390 (9th Cir. 1980). Likewise, using seemingly neutral language that may camouflage racial bias, such as Miller's comment that Marin

City has a "distinct marketability," is considered unacceptable within the industry because it may demonstrate intent to discriminate. *See* Fannie Mae Single Family Guidelines, Sections B4-1.1-04, Unacceptable Appraisal Practices[4] (unacceptable to use terms like "desirable" or "undesirable"); *Flores*, 617 F2d. at 1390 (comments about "desirability" may conceal racial bias).

5. The conduct alleged is barred by § 3605(a).

Miller's assertion that § 3605(a) does not bar the practices alleged in the complaint can be rejected based on the face of § 3605, which makes it unlawful "for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race…" 42 U.S.C. § 3605(a). The FHA defines "residential real estate-related transactions" to include the "selling, brokering, or **appraising** of residential real property." 42 U.S.C. § 3605(b)(2) (emphasis added); *see also Thomas v. First Fed. Sav. Bank of Indiana*, 653 F. Supp. 1330, 1338 (N.D. Ind. 1987) ("a defendant cannot escape liability under the Fair Housing Act by artificially lowering the appraised value of a home for a prohibited reason like race").

HUD regulations construing § 3605 remove any doubt that it applies to the appraisal practices alleged in the complaint. For purposes of § 3605(a), "the term appraisal means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value." 24 C.F.R. § 100.135(b).

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[4] https://selling-guide fanniemae.com/Selling-Guide/Origination-thru-Closing/Subpart-B4-Underwriting-Property/Chapter-B4-1-Appraisal-Requirements/Section-B4-1-1-General-Appraisal-Requirements/1032991811/B4-1-1-04-Unacceptable-Appraisal-Practices-02-02-2022.htm?SearchType=coveo&_ga=2.38906211.1967886129.1644183940-872446092.1644183940 (last visited Feb. 6, 2022)

To overcome a motion to dismiss a claim under § 3605(a), the complaint must identify the protected basis (*e.g.,* race) that was allegedly considered, the person or entity who allegedly considered that protected basis, and when. *Swanson v. Citibank*, 614 F.3d 400, 406 (7th Cir. 2010). The complaint need not detail methods of proof or marshal all of the evidence in order to survive at such an early stage of the litigation. *Id.* at 407.

Here, the level of specificity contained in the complaint far exceeds Rule 8 and *Twombly/Iqbal* standards. Plaintiffs satisfy the three pleading elements set forth in *Swanson* by alleging that their race, or the perceived racial demographics of the area, were considered; that Miller considered race in preparing an appraisal of the Pacheco Street House; and that she issued that appraisal on January 20, 2021. But the complaint goes well beyond these basic allegations by identifying at least five evidentiary bases on which the trier-of-fact may conclude that race was improperly considered by Miller. Plaintiffs may uncover additional evidence during discovery. But at this stage, plaintiffs have presented a cogent and plausible analysis of Miller's consideration of race in connection with the appraisal of the Austins' dwelling. Nothing more is required to proceed.

Miller's assertion that § 3605(c) excuses the conduct alleged in the complaint (Motion at 9) misreads the text, fails to grasp how that subsection compliments the complaint's allegations, and misapprehends the standard on a motion to dismiss. Section 3605(c) makes the unremarkable statement that the FHA does not bar an appraiser from "tak[ing] into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status." As HUD has stated, this provision implies that "consideration of any factor because of race [or other prohibited ground] *does* constitute a discriminatory housing practice." 54 Fed. Reg. 3242 (Jan. 23, 1989) (emphasis in original). Plaintiffs allege that Miller ***did*** consider race, including the racial demographics of Marin City or the Austins' race, or both. (E.g., Complaint ¶ 2.) These allegations and the supporting evidence place this case firmly within the ambit of § 3605.

Miller's attempt to sideline other cases holding that a discriminatory appraisal states a claim under § 3605 also fails. (Motion at 13.) In *Latimore v. Citibank Federal Savings Bank*, for example, the Seventh Circuit assumed without discussion that a discriminatory real estate appraisal violates § 3605. 151 F.3d 712. The Court entered summary judgment for defendants, however, because the only evidence provided by plaintiff was the difference in value between two different appraisals. *Id.* at 715. By contrast, plaintiffs' complaint includes an abundance of direct and circumstantial evidence of discrimination besides the value differences. That evidence is enough to create a cognizable claim.

Miller's assertion that these allegations are insufficient because their conduct "could equally be explained by non-discriminatory factors" (Motion at 9) must not lead to dismissal at this early stage. Weighing the evidence alleged in the complaint against explanations offered by a defendant is not the proper function of the court on a motion to dismiss. *See, e.g., In re Zappos, Inc.,* 888 F.3d 1020, 1028 (9th Cir. 2018); *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)(Rule 12(b)(6) "does not countenance … dismissals based on a judge's disbelief of a complaint's factual allegations"); *Swanson,* 614 F.3d at 404. Rather, the court should assume the veracity of plaintiffs' allegations and then "determine whether they plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 679.

6. The practices alleged state a claim of disparate impact on African Americans in violation of §§ 3604 and 3605.

Although the heart of this case is a claim of intentional discrimination, plaintiffs also have explicitly alleged that the "methods of valuation used by Miller had a disparate impact on African American homeowners or home purchasers based on their race." (Complaint ¶ 66.) Disparate impact claims are cognizable under §§ 3604 and 3605 of the FHA. *Texas Dept. of Hous. and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 534 (2015); 24 C.F.R. § 100.500.

The Court should deny Miller's motion to dismiss because plaintiffs have adequately pled the two elements required to prove disparate impact: (1) a specific policy or practice that allegedly results

in a disparate impact; and (2) the protected class that is allegedly disproportionately impacted. *See, e.g., Ramirez v. GreenPoint Mortg. Funding, Inc.*, 633 F. Supp. 2d 922, 927 (N.D. Cal. 2008). Where the defendant's practices are subjective or discretionary, such as those employed by Miller, they are more likely to survive a motion to dismiss. *Watson v. Fort Worth Bank and Trust,* 487 U.S. 977, 982 (1988)(Title VII case).

The complaint alleges that Miller engaged in at least four practices that have a disparate impact on African Americans: (1) focusing too narrowly on Marin City, a historically undervalued neighborhood, when selecting comps; (2) making improper adjustments to value and price per square foot from sales in nearby areas that are predominantly white; (3) considering Marin City to have a "distinct marketability" despite the lack of data to support any such distinction; and (4) calculating a "predominate value" for property in Marin City despite the paucity of sales data to support any such value. Nothing more is required at this stage.

7. The practices alleged state a claim under § 3617.

Section 3617 broadly prohibits practices that "interfere with" the exercise of fair housing rights protected by the FHA, such as §§ 3604 and 3605. *Walker v. City of Lakewood*, 272 F.3d 1114, 1129 (9th Cir. 2001)(quoting *U.S. v. City of Hayward*, 36 F.3d 832, 835 (9th Cir. 1994)("interferes with" under § 3617 should be "broadly applied to reach all practices which have the effect of interfering with the exercise of rights under the federal fair housing laws").

Plaintiffs contend that Miller interfered with their rights by considering race – either racial demographics of Marin City and surrounding areas, or the Austins' race, or both – in determining the value of the Pacheco Street House. This interfered with the Austins' fair housing rights by devaluing their house and properties in their area generally. *See Hansen*, 800 F.2d at 1386 (holding that enjoining discriminatory appraisal practices are redressable because decrease the value of plaintiff's house and others in the area). The same contention was made by the United States and accepted by

the court in *United States v. AIREA*. There, the court held that § 3617 was violated when appraisers treated race as a "negative factor" in the valuation of dwellings. 442 F. Supp. at 1079. Plaintiffs are entitled to pursue the same claim here.

8. The complaint states a plausible claim that Miller violated § 3604 (c).

Plaintiffs sufficiently allege that Miller's conduct also violates § 3604(c). Section 3604(c) makes it unlawful to "make print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color …, or an intention to make any such preference, limitation, or discrimination." Written or oral statements that indicate to an ordinary reader or listener any such preference or discrimination in connection with a dwelling are covered. *See* 24 C.F.R. § 100.75(b); *Tyus v. Urban Search Management*, 102 F.3d 256, 266–67, (7th Cir. 1996); *Hill v. River Run Homeowners Association, Inc.*, 438 F. Supp. 3d 1155, 1176 (D. Idaho 2020); *Housing Rights Center v. Sterling*, 404 F. Supp. 2d 1179, 1193–94 (C.D. Cal. 2004); *U.S. v. Plaza Mobile Estates*, 273 F. Supp. 2d 1084, 1091 (C.D. Cal. 2003).

Plaintiffs have alleged that Miller's written statement that Marin City has a "distinct marketability which differs from the surrounding areas" indicates discrimination based on race. (Complaint ¶ 55.) Embedded in this statement is an assumption that white buyers do not want to purchase in Marin City because of its demographics, making it "distinct" from surrounding areas like the City of Sausalito and Mill Valley. Similar statements concerning the racial composition of neighborhoods have been held to violate § 3604 (c). *Heights Community Cong v. Hilltop Realty*, *Inc.*, 774 F.2d 135, 137, 140–41 (6th Cir. 1985).

Likewise, thinly-veiled value judgments about desirability also may demonstrate racial preferences. *See Hansen v. Veterans Admin.*, 800 F.2d 1381, 1387 (5th Cir. 1986) (noting expert testimony that certain phrases may have racial connotations, but holding that judge did not err in

crediting different testimony); *Flores*, 617 F.2d at 1390. Just as the defendants in *Hansen,* Miller may present evidence at trial that her words did not reflect racial considerations. But at this stage, that argument cannot be resolved. Plaintiffs have adequate pled discriminatory statements.

9. The FHA applies to the Miller Appraisal.

Miller asserts that the FHA does not apply to her appraisal of the Austins' house. (Motion at 10-11.) This must be rejected for three reasons. First, the limited exemption asserted by Miller does not apply to violations of §§ 3604(c), 3605, or 3617. Plaintiffs have brought claims under all three of these sections. Second, it is an affirmative defense, inappropriate for adjudication in a motion to dismiss unless the "allegations of the complaint itself set forth everything necessary to satisfy the affirmative defense." *United States v. Lewis*, 411 F.3d 838, 842 (7th Cir.2005); accord *County of Cook v. Bank of America*, 181 F.Supp. 3d 513, 520 (N.D. Ill. 2015). Third, this narrow provision exempts only the owner of the house. *Singleton v. Gendason*, 545 F.2d 1224, 1226 (9th Cir. 1976) ("Tenants of a dwelling cannot claim the protection of § 3603(b)(1) because that exemption is only available to owners."); *Whisby-Myers v. Kiekenapp*, 293 F. Supp. 2d 845, 851 (N.D. Ill. 2003). Fourth, the exemption does not apply when "any person in the business of selling or renting dwellings" is involved. 42 U.S.C. § 3603(b)(1)(A). Miller is a licensed professional engaged in transactions and services involving the sale of dwellings, and is therefore not exempt from the FHA's coverage. *See Singleton,* 545 F.2d at 1226-27 (the category of professionals whose employment will defeat the exemption is broad).

B. The Complaint states a claim under FEHA.

Plaintiffs' complaint sets forth plausible claims under FEHA for the same reasons that plaintiffs' claims under the FHA are plausible. FEHA is substantially similar to the FHA and may not be construed more narrowly than the FHA. *See* Gov't Code § 12955.6 (FEHA may not be construed to provide fewer rights or remedies than the FHA and its implementing regulations); 2 Cal. Code

Regs. § 12005(l) ("discriminatory housing practice" in violation of FEHA is defined as any act that is unlawful under the FHA). FEHA also explicitly bars residential real estate appraisers from discriminating against any person "in the performance of those [appraisal] services, because of race…" Gov. Code § 12955(i)(2). The dearth of case law applying this section notwithstanding, the text of FEHA barring discriminatory real estate appraisals could not be clearer. For all of the reasons that plaintiffs' allegations set forth plausible claims under the FHA, the court should also deny Miller's motion to dismiss plaintiffs' FEHA claims.

C. The Complaint states a claim under the Civil Rights Act of 1866.

The complaint also adequately states claims under the Civil Rights Act of 1866, 42 U.S.C. §§ 1981 and 1982. These protections from race discrimination are not nearly as constrained as Miller claims. (Motion at 14-15.) *See City of Memphis v. Greene*, 451 U.S. 100, 122 (1981) (§ 1982 should be broadly construed as a remedial statute); *see also* Robert G. Schwemm, Housing Discrimination Law and Litigation, § 27:4 Substantive coverage of § 1982 (July 2021 ed.) ("whether a particular practice is prohibited by § 1982—is generally not answered by the language of the statute itself"). Both sections have been construed to cover the conduct alleged by plaintiffs here. *Steptoe*, 88 F. Supp. at 1547; *Thomas v. First Federal Savings Bank of Indiana*, 653 F. Supp. 1330, 1342 (N.D. Ind. 1987) (assuming without discussion that 1981 and 1982 cover discrimination in appraisals but holding that plaintiffs did not prove discrimination at trial).

Section 1981 ensures, *inter alia,* that all persons share the same rights to "the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens." Section 1982 guarantees all citizens the same right as white citizens to "inherit, purchase, lease, sell, hold, and convey real and personal property." The standards of proof that apply to each are the same as the standards under the FHA. *Inclusive Communities Project, Inc. v. Heartland Community Association, Inc.,* 824 Fed. Appx. 210, 219 (5th Cir. 2020). "[V]ery little evidence" is

required to survive early procedural hurdles in a § 1981 case, because "the ultimate question is one that can only be resolved through a 'searching inquiry'" conducted by the fact finder on a full record. *Hobson v. HSC Real Est., Inc.,* 483 Fed. Appx. 332, 333 (9th Cir. 2012)(unpublished), quoting *Metoyer v. Chassman*, 504 F.3d 919, 930 (9th Cir. 2007); *accord National Fair Housing Alliance, Inc. v. Prudential Ins. Co. of America*, 208 F.Supp.2d 46, 61 (D.D.C. 2002) (complaint's bare allegation that homeowners insurers engaged in "intentional discrimination on the basis of race or color" is sufficient to withstand a motion to dismiss under § 1981).

Plaintiffs have sufficiently alleged that defendants have interfered with their right to equal treatment and to hold real property by discriminating based on race. By considering racial demographics of the area and the Austins' race in their appraisal, plaintiffs allege that Miller undervalued their property. (Complaint ¶¶ 3, 52, 55, 62) Undervaluation of their property impairs their right to refinance their house on favorable terms, or sell their house for fair market value. It also depresses property values in the Austins' immediate area, to the detriment of the Austins. Each of these constitutes an impairment of property interests that is cognizable under §§ 1981 and 1982. *See Greene*, 451 U.S. at 122-23 (recognizing action that "depreciated the value of Black citizens" would violate 1982); *Tillman v. Wheaton-Haven Recreation Ass'n, Inc.,* 410 U.S. 431, 438 (1973) (possible reduction in home value based on racially discriminatory club membership rights is cognizable); *Evans v. First Federal Sav. Bank of Indiana*, 669 F. Supp. 915, 919 (N.D. Ind. 1987) (discrimination in refinancing or home equity loans based on race deprives Black citizens of the right to "use property" on an equal basis).

In *Smith v. City of Cleveland Heights*, 760 F.2d 720, 722–24 (6th Cir. 1985), the court held that the City's racial "integration maintenance" program may violate §§ 1981 and 1982 despite the City's benign motives, because they stigmatized and limited housing opportunities of Black residents. Similarly, Miller's race-conscious practices alleged in the complaint stigmatize Black residents by

assuming that their properties have lower values and are inherently differently valued than similar properties in white areas. These practices, in turn, limit the abilities of Black residents to gain personal and generational wealth through property ownership, obtain loans to improve their properties, or choose to move to a predominantly white area with higher property values – thereby perpetuating discrimination. Section 1982 may be infringed even if defendants did not create the segregated housing patterns to begin with. *Clark v. Universal Builders, Inc.*, 501 F.2d 324, 329-30 (7th Cir. 1974) (the broad, "far reaching" language of § 1982 is violated by actions that "exploit[] a situation created by socioeconomic forces tainted by racial discrimination").

Miller attempts to distinguish two cases that have held appraisers accountable under § 1981 and 1982. *Latimore,* as discussed above, stands for the proposition that a discrepancy in two appraisal values is not sufficient evidence to support a claim of discrimination. Here, plaintiffs offer far more evidence. Defendants assert that *Mathis* is distinguishable because the defendant there was accused of overvaluing property. (Motion at 15, *Mathis v. United Homes LLC*, 607 F.Supp.2d 411 (EDNY 2009).) The statutes do not support this distinction. They forbid consideration of race in the valuation of property regardless of whether it results in a low or high valuation if a plaintiff is injured. Whether a defendant overvalues or undervalues Black-owned property is a difference without a distinction.

D. The complaint states a claim under the Unruh Civil Rights Act

Miller asserts that plaintiffs' claims fail under the Unruh Act, Civil Code § 51 *et seq.*, because either they were able to obtain a second appraisal and refinance based on that appraisal, or because plaintiffs fail to allege sufficient facts to show intentional discrimination. But plaintiffs have adequately pled evidence that tends to show that race was factor in her appraisal, as explained above. The discriminatory housing practices reflected in that appraisal injured plaintiffs both emotionally and financially, regardless of the March 2020 appraisal and refinance. Because Janette C. Miller, as a real estate appraiser, and her firm Miller and Perotti Real Estate Appraisal, Inc., are business

establishments within the meaning of the Unruh Act, this claim must also withstand defendants' motion to dismiss. *See Lee v. O'Hara*, 57 Cal. 2d 476 (1962) (holding that individual real estate brokers are covered); *Lentini v. Cal. Ctr. for the Arts,* 370 F.3d 837, 850 (9th Cir. 2004) (finding theater employee individually liable under Unruh Act).

E. Plaintiffs' other claims form the basis for a Gov't Code § 17200 Claim

Plaintiffs contend Miller's conduct also violates the Unfair Competition Law, Government Code § 17200 *et seq.* ("UCL"). The UCL allows recovery for, *inter alia,* "any unlawful, unfair or fraudulent business act or practice." An action based on this state statute "borrows" violations of other laws when committed as part of a business activity. *See Harris v. Investor's Business Daily, Inc.*, 138 Cal.App.4th 28, 32-33 (2006). A violation of the FHA, FEHA, or the Unruh Act will support a claim for violation of UCL. *Consumers Union v. Fisher Dev't,* 208 Cal.App.3d 1433 (1989) (Unruh Act forms basis for UCL claim); *People ex rel. City of Santa Monica v. Gabriel*, 186 Cal.App.4th 882, 887-88 2010) (landlord's sexual harassment of tenant violates UCL). A party suing for violation of the UCL must "(1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e., economic injury, and (2) show that that economic injury was the result of, i.e., caused by, the unfair business practice ... that is the gravamen of the claim." *Alcaraz v. KMF Oakland LLC*, 18-CV-02801-SI, 2020 WL 3128872, at *7 (N.D. Cal. June 12, 2020), quoting *Kwikset Corp. v. Super. Ct.,* 51 Cal. 4th 310, 322 (2011). Plaintiffs here have satisfied these standing requirements. Moreover, if any of plaintiffs' other claims survive defendants' motion, so too should plaintiffs' UCL claim. *Leonel v. American Airlines, Inc.*, 400 F.3d 702, 711 (9th Cir. 2005); *Cai v. Fishi Cafe, Inc.,* No. C-05-03174 EDL, 2007 WL 2781242 at *6 (N.D. Cal. 2007).

F. Plaintiffs state a claim for negligent misrepresentation

Miller claims that the duties owed by an appraiser do not give rise to a cause of action for

negligent misrepresentation as a matter of law.[5] (Motion at 18-19) But all of the cases cited by defendants are based on an outdated version of the Uniform Residential Appraisal Report (URAR). The duties that an appraiser owes to a borrower have evolved, as reflected in the URAR that Miller used here. These certifications were not present on the URAR that was at issue in previous cases.

In *Tindell v. Murphy,* for example, the appraisal report at issue was prepared in December 2004. 232 Cal.Rptr.3d 448, 450-41. In March 2005, however, Fannie Mae revised the official report form.[6] The key revision, for the purposes of plaintiffs' claims here, was the addition of Certification number 23, in which the appraiser certifies that "the borrower…may rely on this appraisal report…" (Complaint ¶ 63.) This certification created new duties on the part of appraisers and justifiable reliance on the part of borrowers that did not exist in the version of the URAR that was at issue in *Tindell.* Likewise, the appraisal report issued in *Willemsen v. Metrosilis* explicitly limited use to the lender and disclaimed any liability to third parties such as the borrower. 230 Cal.App.4th 622, 628 (2014). By contrast, Miller signed a certification stating that she understands that the borrower – *i.e.,* the Austins – may rely on her report. This is sufficient under other case law. *See, e.g, Soderberg v. McKinney*, 44 Cal.App.4th 1760, 1772 (1996) (reversing summary judgment for appraiser in negligent misrepresentation claim).

Accordingly, *Tindell, Willemsen*, *Gay v. Broder*, 109 Cal. App. 3d 66 (1980), and their reasoning are not persuasive when an appraiser like Miller uses the current version of the URAR.

IV. CONCLUSION

Construing plaintiffs' allegations as true and in the light most favorable to plaintiffs, the

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[5] Heightened pleading standards under Rule 9 (b) of the Federal Rules of Civil Procedure do not apply here, as plaintiffs have not alleged fraud or mistake within the meaning of the rule. *See Peterson v. Allstate Indem. Co.,* 281 F.R.D. 413, 417 (C.D. Cal. 2012)(rejecting heightened pleading standard for negligent misrepresentation).

[6] https://www.appraisalinstitute.org/FannieMaeReleasesFinalVersionsof11FormstoLenders;AIFocusesonEducationEffort/ (last visited Feb. 6, 2022).

complaint states valid claims and cognizable legal theories of race discrimination by the Miller Defendants in violation of the Fair Housing Act and the other civil rights statutes. Plaintiffs also have adequately pled claims for negligent misrepresentation. Accordingly, Miller's motion to dismiss must be denied.

DATED: February 7, 2022

Respectfully submitted,
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Certificate of Service

Pursuant to Rule 5 of the Federal Rules of Civil Procedure, on February 7, 2022, I caused the following document to be served by email via the Court's ECF system – **PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS FILED BY DEFENDANT JANETTE C. MILLER AND MILLER AND PEROTTI REAL ESTATE APPRAISALS**

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